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**DIGEST OF RECENT VIRGINIA DECISIONS.**

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**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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**BLANKENSHIP v. COMMONWEALTH.**

June 15, 1922.

[112 S. E. 622.]

**1. Larceny (§ 5\*)—To Convict State Must Show that the Dogs Have Been Assessed with a License Tax Which Is Not Delinquent.**—In view of Code 1919, § 2324, providing that all dogs which have been assessed with a license tax which is not delinquent shall be deemed personal property and may be the subject of larceny, to sustain a conviction under section 4440, defining grand larceny, it must be shown that the dogs were assessed with a license tax which was not delinquent at the time of the theft; section 4445, providing that dogs in certain cities and counties shall be deemed personalty whether listed for taxes or not, applying only to petit larceny, and not embracing the territory where the case arose.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 217.]

**2. Larceny (§ 5\*)—Dogs Not Subject of at Common Law.**—The doctrine of the common law recognized by Virginia statutes was that dogs were not the subject of larceny.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 217.]

Error to Corporation Court of Roanoke.

Herman Blankenship was convicted of grand larceny, and brings error. Reversed and remanded.

*John G. Challice*, of Roanoke, for plaintiff in error.

*John R. Saunders*, *Atty. Gen.*, and *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, and *Leon M. Bazile*, *2d Asst. Atty. Gen.*, for the Commonwealth.

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**CITY OF WILLIAMSBURG v. LYELL.**

June 15, 1922.

[112 S. E. 666-7.]

**1. Municipal Corporations (§ 225 (1)\*)—City May Alienate Property Owned by It Not Appropriated for Public Use.**—Property owned by a city for governmental purposes and appropriated for the public use is impressed with a trust and cannot be disposed of except by

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

valid legislative authority; but, as a general rule, a municipal corporation, unless restricted by its charter or by statute, may not only acquire property, real and personal, but, where it is not appropriated for the public use, may alienate it.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 220.]

**2. Dedication (§ 44\*)—Maps Designating City Square as "Market Square" Held Insufficient to Prove Dedication.**—Two maps of 1780 and 1800, designating a city square, within which was included a lot, a lease of which lessee sued to compel the city to renew, as "market square," held insufficient to prove a dedication thereof to public use.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 359.]

**3. Municipal Corporations (§ 720\*)—Lot in Market Square Not Dedicated to Public Use Could Be Leased or Sold by City of Williamsburg.**—In view of Act of 1705 (3 Henning's St. p. 419), appropriating land for the building of the city of Williamsburg, designating certain parts thereof to be held on a public trust for streets and ports, providing for subdividing the remaining acres into lots and appointing commissioners to sell and convey them, and granting power to purchase, grant, demise, etc., all lands, rents, tenements, etc., the city had power to lease a lot in a market square of which no mention was made in such statute as having been dedicated to public uses, and which included other privately owned property.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 220.]

Appeal from Circuit Court of City of Williamsburg and County of James City.

Suit by John Milton Lyell against the City of Williamsburg. Decree for complainant, and defendant appeals. Affirmed.

*Ashton Dovell*, of Williamsburg, for appellant.

*Frank Armistead*, of Williamsburg, for appellee.

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HIBBS et al. v. FIRST NAT. BANK OF ALEXANDRIA.

June 15, 1922.

[112 S. E. 669.]

**1. Payment (§ 85 (1)\*)—Right to Recover Money Paid by Mistake Is Based on Implied Promise to Return It.**—The right to recover money paid by mistake of fact is based on the promise to return it, which the law implies, irrespective of any actual promise and even against the refusal to make it, when the circumstances are such that ex æquo et bono the money should be paid back.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 876.]

**2. Payment (§ 85 (1)\*)—Money Paid by Mistake Cannot Be Recovered Where Payee's Position Is So Changed that It Would Be**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.